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W12.5c

Appeal Filed: 7/20/01
Permit Filed 9/24/01
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Staff: PE/LB
Staff Report: 10/30/01
Hearing Date: 11/17/01
Commission Action:

STAFF REPORT: SUBSTANTIAL ISSUE ON APPEAL DE NOVO AND REGULAR CALENDAR

LOCAL GOVERNMENT: City of Los Angeles

LOCAL DECISION: Approval with Conditions (CP-00-008)

APPEAL NUMBER: A-5-PLV-01-281
PERMIT NUMBER 5-01-223

APPLICANT: Playa Capital LLC

PROJECT LOCATION: Directly east of Culver Blvd. and Jefferson Blvd intersection Area B, Playa Vista, Los Angeles County

PROJECT DESCRIPTION: CDP 00-08: The project would demolish the existing "Y"-shaped intersection at Culver Boulevard and Jefferson Boulevard and construct a "T"-shaped, right-angled intersection. Project would reduce impervious surfaces by 5,983 sq. ft.

APPELLANTS: Executive Director/California Coastal Commission; John Davis, Coalition to Save the Marina; and Ballona Wetlands Land Trust

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission after a public hearing, determine that **a substantial issue exists** with respect to the grounds on which the appeal has been filed because the project approved by City was approved with insufficient evidence regarding the project's consistency with the marine resource (water quality), wetland and habitat protection policies of the Coastal Act. The motion is found on **PAGE 8,** motions on de novo action and permit are found on **PAGE 19 AND 20**

Staff is recommending approval of the permit and the de novo appeal with conditions to limit construction and staging to areas that are outside the wetlands, to control siltation and to employ best management practices to minimize inflow of polluted street runoff after construction. The staff also recommends that disturbed areas be revegetated and that, in view of indirect wetlands impacts, that the applicant identify an area at least equal in size to the area disturbed by the project and remove invasive plants from that area. Finally, consistent with City approval, the applicant shall assure that a qualified biological monitor be on site at all times, that an archaeological monitor be present during initial grading and that construction shall not impact rare plants and nesting birds.

EXECUTIVE SUMMARY

The intersection is located in Area B, Playa Vista, a 335 -acre parcel west of Lincoln Boulevard, the portion of Playa Vista that all parties agree contains the greatest acreage of wetland and the wetlands that are in the best condition. The United States Army Corps of Engineers estimated in 1989 that there were 170.56 acres of wetland in Area B Playa Vista. In 1991, the Department of Fish and Game concurred with that delineation. The actual work of the proposed project is not located on a wetland and the proposed project will reduce the paved area within the intersection that is presently 15,644 square feet to 9,661 square feet, a net reduction of 5,983 square feet. Nevertheless, due to its location in a historic wetland and its present location adjacent to a wetland, the staff is recommending that the City's approval raises a substantial issue of conformity with the wetland protection policies of the Coastal Act.

The change in this intersection is required as mitigation for development that is already approved in Area D Playa Vista, the segment of the Playa Vista project that: (a) is under construction; and (b) is located outside the Coastal Zone. Culver and Jefferson Boulevards have been in existence for many years. Culver Boulevard is parallel to the route of the Pacific Electric Railway line that extended from Venice Boulevard to a turn of the century[1] settlement at the mouth of Ballona Creek optimistically called "Port Los Angeles". Jefferson Boulevard extends from near downtown Los Angeles to this intersection, where it ends. In this area, Jefferson Boulevard has a total of four lanes and a narrow shoulder. East of this intersection, between this intersection and Route 90, Culver Boulevard has only two lanes, one in each direction. The two roads meet at an acute angle at a traffic light. The project will remove some of the present "V" shaped intersection asphalt in a triangle between this new road way and the roadway that will remain, resulting in a net reduction in impervious paved area. The area between the rights of way has not been identified by any agency as a wetland, although historically it was wetland.

The 1989 United States Army Corps of Engineers wetland delineation both show that actual wetlands are located almost immediately adjacent to the south side of Jefferson Boulevard. The delineated Corps wetlands on the north side of Culver Boulevard are about 70 feet from the proposed roadwork and 55 feet from the staging area. There are wetlands almost adjacent to the south side of the current intersection. Exhibits 16 and 5)

The applicant contends that this intersection realignment will (1) improve the safety of the interchange, which has a high level of accidents; (2) decrease the area of impervious surfaces at the interchange; (3) increase the capacity of the interchange; and (4) is not located on any wetland. The applicant further contends that the staging areas are not located in a wetland and will not adversely affect wetland areas.

In the Executive Director's appeal, the contention is made that approving the intersection now may limit the choice of future restoration plans; that the local action is

[1] 19th to 20th centuries.

not based on a current wetland delineation; that the City approval does not include an analysis of the possible water quality impacts of this change or impacts of the development on nearby habitat. It is also asserted that the City approval does not discuss why this improvement could not be delayed until after the review and certification of the Second Phase Playa Vista EIS/EIR, which will include alternative wetland restoration plans.

Appellant John Davis, representing Save the Marina /Ballona Wetlands Land Trust, contends that the City violates Chapter 3 provisions and policies of the Coastal Act, the Clean Water Act, the National Environmental Protection Act and the California Environmental Quality Act.

APPEAL PROCEDURES

Section 30600(b) allows a local government to assume the authority to issue coastal development permits within its jurisdiction before certification of its local coastal program. The City of Los Angeles issues coastal development permits under this Section of the Coastal Act. The City of Los Angeles pre-certification permit ordinance delegates review of all public works projects to the Department of Public Works. The standard of review on appeal of a coastal development permit issued under Section 30600(b) is Chapter 3 of the Coastal Act. Sections 13302-13319 of the California Code of Regulations provide procedures for issuance and appeals of locally issued coastal development permits prior to certification of a LCP.

After a final local action on a coastal development permit issued pursuant to Section 30600(b) of the Coastal Act prior to certification of the LCP, the Coastal Commission must be noticed within five days of the decision. After receipt of a notice, which contains all the required information, a twenty working day appeal period begins. During the appeal period, any person, including the applicant, the Executive Director, or any two members of the Commission, may appeal the local decision to the Coastal Commission (Section 30602). Section 30621 of the Coastal Act states that a hearing on the appeal must be scheduled for hearing within 49 days of the receipt of a valid appeal. The appeal and local action are analyzed to determine if a substantial issue exists as to the conformity of the project to Chapter 3 of the Coastal Act (Section 30625(b)(1)). If the Commission finds substantial issue, the Commission holds a new public hearing to act on the coastal development permit as a de novo matter.

The action currently before the Commission is in two parts. First, the Commission must determine whether the appeal of the local approval of the proposed project raises a "substantial issue" or "no substantial issue" concerning the decision's conformity with Chapter 3 of the Coastal Act. Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. After hearing testimony, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

The de novo hearing has been scheduled at the same Commission hearing as this substantial issue hearing. Because this is an appeal of a local government permit issued by the City of Los Angeles under Section 30600(b) of the Coastal Act, the standard of review is the Coastal Act. Sections 13330-3343 of the California Code of Regulations further explain the appeal process for permits issued by a local government under Section 30600(b) of the Coastal Act.

DUAL PERMIT JURISDICTION

Section 30601 establishes that, in addition to a permit from local government pursuant to subdivisions (b) or (d) of Section 30600, a coastal development permit shall be obtained from the Commission for all major public works projects, for developments located within 100 feet of any wetland, estuary or stream, or located between the first public road paralleling the sea and the sea. The project is a major public works project, costing in excess of one hundred thousand dollars. This intersection improvement project is located within 100 feet of a wetland. Finally the project staging areas are located north of Culver Boulevard, between Culver Boulevard, a public road, and the Ballona Channel, which because it is subject to tidal action, is regarded as an arm of the sea for purposes of Section 30601. If the Commission finds this appeal raises substantial issue with the local government's action, the *de novo* matter will be heard in conjunction with the permit filed in accordance with Section 30601. The applicant has submitted this permit request. The number of the "dual permit" for this identical development is 5-01-223 (Playa Capital).

SUBSTANTIVE FILE DOCUMENTS

1. Pete Bontadelli, Department of Fish and game, MEMORANDUM: Ballona Wetland acreage determination Contained in the Department of Fish and Games September 12, 1991 Memorandum to the Fish and Game Commission, December 20, 1991.
2. Los Angeles County Museum of Natural History, Significant Ecological Areas of Los Angeles County, 1976.
3. John Dixon, Coastal Commission Senior Biologist, Memorandum, 10/25/01, "October 24 site visits, la Ballona area."

(Additional substantive file documents are found in the Appendix).

I. APPELLANTS' CONTENTIONS

Appellants, Coalition to Save the Marina and the Ballona Wetlands Land Trust raise the following issues as a basis for their appeal: the City action violates Chapter 3 provisions and policies of the Coastal Act, the Clean Water Act, the National Environmental Protection Act and the California Environmental Quality Act

In the Executive Director's appeal, the contention is made that

- The local action does not include and is not based on a recent wetland delineation in the immediate area of the project using the Cowardin method of wetland delineation
- The analysis limited itself to direct displacement of (Corps) wetlands and did not address indirect effects of the construction or of the completed project on nearby wetlands.
- The local action does not adequately address water quality of the road runoff and impacts on surrounding water bodies and habitat areas.
- Realignment of this intersection is a requirement of the Playa Vista First Phase EIR. The locally issued permit does not explain the reasons the City has required this intersection improvement or why this improvement could not be delayed until Phase Two development decisions are made.
- The local approval cites the Phase I EIR that does not purport to analyze impacts of development at the location of this road improvement
- The intersection now may limit the choice of future restoration plans which will be analyzed in the amended LUP;
- Realignment of this intersection is a requirement of the Playa Vista First Phase EIR. The locally issued permit does not explain the reasons the City has required this intersection improvement or why this improvement could not be delayed until Phase Two development decisions are made.

A complete text of the appeal is attached.

II. LOCAL GOVERNMENT ACTION:

On March 30, 2001, the City Engineer approved coastal development permit CDP-00-008 for realignment of the intersection of Culver and Jefferson Boulevards with a special condition which required the applicant, Playa Capital, to conduct a field survey to identify sensitive avian species prior to construction, and a second special condition requiring the applicant to place temporary fencing around construction areas. The Ballona Wetlands Land Trust, the Coalition to Save the Marina and the Wetlands Action Network appealed the decision to the Board of Public Works. On May 24, 2001, the City of Los Angeles Board of Public Works heard the appeal and sustained the City Engineer's action. The Board made the following findings regarding the realignment of the intersection:

1. That whereas the proposed project achieves a balance between public access and private rights, the developments in conformity with public access and recreation policies of Chapter 3 of the California Coastal Act of 1976.
2. Whereas with specific mitigation measures affecting land resources (temporary fencing placed around construction area and a field survey to

identify sensitive avian species), the proposed development will not significantly affect the public access, recreation, marine environment, land resources or industrial development, the development is in conformity with chapter 3 of the California Coastal Act of 1976.

3. That whereas the development is in conformity with the Playa del Rey District Plan [the certified LUP] and the Coastal Act, therefore the proposed development will not prejudiced the ability of the City of Los Angeles to prepare a local coastal plan that is in conformity with Chapter 3 of the California Coastal Act of 1976.
4. That as evidenced in the staff report on this development, the interpretive guidelines for coastal planning and permits as established by the California Coastal Commission dated February 11, 1977 and subsequent amendments thereto have been reviewed, analyzed and considered in light of the individual project in making its determination.

The Board staff report, (Exhibit) which represent the underlying findings of the City in this matter, concluded that 1) the realignment was subject to the City council action approving the First Phase Playa Vista EIR[2], as mitigation measure F 14.

In response to an assertion that the area in which the project was proposed is a Significant Ecological Area, and that biological issues were not addressed, the Board found that there was an adequate biological survey, that there was a possibility of impact on sensitive avian species, and that the impacts were addressed with a condition.

To address a similar issue raised about marine resources, that City staff had not conducted a survey the Board noted that a vegetation survey had been prepared by the applicant's consultant Psomas:

> Though wetland areas were identified north, south and east of the project site, the project will not involve or impact the biological productivity or water quality of coastal waters streams, wetlands, estuaries and lakes appropriate to maintain optimum populations of marine organisms as discussed in §30231. The Culver/Jefferson Boulevard intersection project should not disrupt or otherwise impact environmentally sensitive habitat areas and is consistent with §30231."

In the appeal to the Board of Public Works the appellant stated that additional impacts from increased imperviousness have not been addressed. The Board, report concluded that Ballona watershed is overwhelmingly urbanized and the intersection improvement will not significantly alter the level of imperviousness in the watershed. "The dedication is disturbed and heavily compacted while portions of the original in Section pavement will be removed. The issue…is not relevant to the permit."

[2] "The mitigation was adopted in EIR 90-0200-SUB(C) (CUZ) (CUB) which was certified on September 21, 1993. In December 1995 the City Council again reviewed the EIR along with an Addendum/Mitigated Negative Declaration, …and again adopted findings.

In addressing an allegation that the City engineer had not adequately analyzed the safety of development, Board report continued:

> "The appellant states that the City relied upon the applicant's experts to determine that safety of development was not an issue, and that the significance of the City's Chief Legislative Analyst (CLA) study of methane and seismic hazards for the Playa Vista Development was not addressed. "
>
> The City of Los Angeles BOE (August 18, 2000) and the California coastal commission (October 26, 2000) previously found that soil gases in the area do not create a significant risk with regard to streets and storm drains. It appears unlikely that the intersection would affect, or be affected by these soil gases.
>
> The City of Los Angeles CLA (City Legislative Analyst) office issued a (March 6, 2001) report, which updates the evaluation of potential risk factors – such as methane, subsidence, potential faults and health risks of BTEX and hydrogen sulfide-with respect to future public facilities for the Playa Vista project. Methane concentrations in the area of the intersection were less than ten (10) parts per billion. Furthermore it was determined that the gas field is neither leaking nor improperly maintained. The gas storage facility does not present a danger to workers or future residents using the intersections.

The Board in response to an assertion that the project does not comply with CEQA states:

> The appellant asserts that the intersection improvement project does not comply with CEQA because this project is part of a larger traffic mitigation program for Playa Vista Phase 1A. As such, individual mitigation measures for Playa Vista Phase 1A must be analyzed together with all other component mitigation projects to avoid "piecemealing," which is prohibited by CEQA.
>
> The proposed project is a City Council adopted mitigation measure for potential traffic impacts describe in the Playa Vista Phase I EIR. It is described as DOT Mitigation Measure F14 in EIR No. 90-0200-SUB(C)(CUZ)(CUB) which was certified by the City Council on September 1, 1993, when the City approved VTTM No. 49104 which was certified by the City council on September 21, 1993, when the City [Council approved] TTM no. 49104 (Playa Vista Phase I). In December of 1995 the City Council again reviewed and considered the EIR along with a combined Addendum Mitigated Negative Declaration, prepared in connection with its approval of a modification to VTTM No. 49104 and its approval of VTM No. 52092, and again adopted findings. Therefore the requirements of CEQA have been satisfied. (Board Action, May 24, 2001, issued June 7, 2001) (Exhibit)

III. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that a **substantial issue** does exist with respect to the conformity of the project with the Coastal Act and Public Resources Code Section 30625(b)(1)).

> **MOTION:** ***I move that the Commission determine that Appeal No. A-5-PLV-01-281 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30602 of the Coastal Act.***

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. ***A-5-PLV-01-281*** raises a substantial issue with respect to the grounds on which the appeal has been filed under Section 30602 of the Coastal Act regarding consistency of a coastal development permit issued under Section 30600(b) with the Coastal Act.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND HISTORY

The applicant proposes to realign the intersection of Culver Boulevard and Jefferson Boulevard in Area B Playa Vista. Area B Playa Vista is a 338-acre undeveloped tract located south of the Ballona Channel, west of Lincoln Boulevard and east of Playa Del Rey. When the United States Army Corps of Engineers (ACOE or the Corps) surveyed it in 1989, the Corps determined that it contained about 170 acres of wetland. Jefferson Boulevard and Culver Boulevard are existing, intersecting streets that were constructed on prisms of fill in the wetland many years ago, long before the adoption of the Coastal Act. Culver Boulevard was constructed in the 1920's, paralleling the route of a streetcar line (Pacific Electric Railway). The two streets intersect in a raised area that marked the western edge of agricultural field that was farmed late as the 1970's. The project would demolish the existing "Y"-shaped intersection at Culver Boulevard and Jefferson Boulevard and construct a "T"-shaped, right-angled intersection. The applicant asserts that all detours, and staging and equipment storage will be set back from delineated wetlands and that the final project will reduce the amount of impervious area from 15,644 square feet, its present size, to 9,661 square feet, a net reduction of 5, 983 square feet. (Exhibits 2, 3 and 4)

Changes to the intersection that the applicant proposes include:

(1) Dedication of property (approximately 12,000 square feet) along the northeast corner of the intersection,
(2) Realignment of the westbound roadway of Jefferson Boulevard approximately 150 feet northeasterly,
(3) Relocation and modification of the existing traffic signal equipment.
(4) Widening the northwest side of Culver Boulevard up to 5 feet and
(5) Widening the southeast side of Culver Boulevard up to 11 feet from Jefferson Boulevard to a point approximately 780 feet northerly of the existing Jefferson Boulevard centerline to provide up to a 45-foot roadway within the existing 65-foot right-of-way. (Exhibit 9)

The change in this intersection is required as mitigation for development that is already approved in Area D Playa Vista, the part of the Playa Vista project that: (a) is under construction; and (b) is located outside the Coastal Zone. Culver and Jefferson Boulevards have been in existence for many years. Culver Boulevard is parallel to the route of the Pacific Electric Railway line that extended from Venice Boulevard to Port Los Angeles. Jefferson Boulevard extends from near downtown Los Angeles to this intersection, where it ends. In this area Jefferson Boulevard has a total of four lanes and a narrow shoulder. West of the terminus of Jefferson Boulevard, between this intersection and the beach, Culver Boulevard has two lanes in each direction also. East of this intersection, between this intersection and Route 90, Culver Boulevard has only two lanes, one in each direction. The two roads meet at an acute angle at a traffic light. The new roadway connector is proposed to extend from the south side of Culver Boulevard to the north side of Jefferson Boulevard. The centerline of the new connector will be located about 250 feet east of the present intersection. The project will remove some of the present "V" shaped intersection asphalt in a triangle between this new road way and the roadway that will remain, resulting in a net reduction in impervious paved area. The area between the rights of way has not been identified by any agency as a wetland, although historically it was wetland.

The 1989 United States Army Corps of Engineers[3] wetland delineation both show that actual wetlands are located almost immediately adjacent to the south side of Jefferson Boulevard. The delineated Corps wetlands are about 70 feet from the proposed road work but almost adjacent to the south side of the current intersection. An enlarged map shows that these wetlands extend slightly into the southerly boundary of the Jefferson Boulevard right-of-way. An isolated patch of wetlands north of Culver Boulevard are located about 55 feet north of the staging area, and about 70 feet away from the proposed new road way. (Measurements appear slightly different on different size maps. Staff relied on the enlargement of the 1989 Corps map provided by the applicant to the City labeled "State Wetlands,"[4] Exhibit 5.)

The applicant states:

[3] In 1991 the Department of Fish and Game agreed that the Corps delineation of wetlands in Area B, 170.56 acres, was more accurate that the Department's 112-acre delineation for Area B that it provided to the Commission in 1984.
[4] Due to the side effects of photographic enlargement and reduction, the map at a larger scale shows the wetlands closer than the map at the smaller scale.

This realignment increases the queuing area for Culver Boulevard northeast-bound through movement, which will provide sufficient vehicle storage capacity to accommodate a right-turn only lane in the in the northeast bound direction. The result of the realignment will be a net reduction of impervious surfaces of the intersection. After completion, travelers on Culver entering Jefferson east bound will be able to enter Jefferson without stopping. It will be possible to turn left from Culver Boulevard westbound onto Jefferson eastbound. This is not now possible to do safely.

The realignment is a required First Phase Traffic Mitigation Measure from the First Phase Playa Vista EIR. Its purpose is to increase the intersection capacity.

B. PROJECT BACKGROUND

This project is a roadway improvement first identified in the Marina del Rey/Ballona Land Use Plan, which was certified by the Commission in 1984. The realignment was an improvement identified by Barton and Aschman Associates in a 1982 study that addressed traffic improvements and street widening that would be necessary to accommodate development then proposed by Summa Corporation and others both inside and outside of the coastal zone. The report predicted the traffic impacts and outlined the necessary mitigation for "second generation" of the Marina del Rey and certain other major development then planned in the "subarea. The projects included a large commercial project near Centinela Boulevard and the 405, other commercial development in Culver City, Playa Vista development outside the coastal zone and major commercial and industrial projects near the Airport. When the City of Los Angeles annexed Areas B and C of Playa Vista as well as land outside the Coastal Zone owned by the same corporation, it resubmitted an identical Land Use Plan, which the Commission then approved in 1986, and effectively certified in 1987.

The new owner, Maguire Thomas, proposed major development and in September 1992, the City of Los Angeles released a draft of an EIR for a Master Plan Project for Playa Vista. Accompanying the Draft Master Plan Project EIR, the City also released a draft EIR for the project's First Phase, including detailed analysis of the impacts and the necessary mitigation measures of the project's First Phase. This intersection re-alignment was one of the mitigation measures proposed to improve traffic capacity sufficiently to accommodate the traffic the proposed development would be likely to generate. The Phase One development included office, commercial and residential development outside the coastal zone and a Freshwater Marsh inside the coastal zone.

The draft EIR for the First Phase Playa Vista included the following project summary:

	Dwel-ling units	Retail Sq. ft.	Com munity serving sq. ft	Office sq. ft	Hotel rooms	Parks Acres	Riparian outside CZ	Wetlands inside CZ
PHASE I	3,246	35,000	120,000	1,250,000 office	300	6.9	29.3 acres riparian 'corridor ' (26 acres riparian)	34.2 (26.1 acre fresh-water marsh)

The City Council approved the first phase in 1993. In 1993 the City amended its traffic mitigation measures to respond to comments from Caltrans. A summary of these amended mitigation measures are included in Exhibit 20. The proposed Culver/ Jefferson realignment is included in both sets of mitigation measures. In 1995, the applicant sought an amendment to the approved First Phase Project to allow it to re-use the old Hughes Aircraft plant as a Media and Entertainment center. The amended Phase One, Playa Vista project included:

	Dwel-ling units	Retail Sq. ft.	Com-munity serving sq. ft	Office Industrial Media center sq. ft	Parks Acres	Riparian outside CZ	Wetlands inside CZ
AMENDED PHASE I	3,246	35,000	120,000	2,077,050 office 1,129,900 studio	6.9	29.3 acres riparian 'corridor ' (26 acres riparian)	34.2 (26.1 acre freshwater marsh)

The City contends that this and other road widening projects listed in the EIR and adopted as tract mitigation measures are necessary for development that is approved. It does not explain why this road widening cannot wait for the City to consider the second phase EIR. . However, the standard of review for this and other road improvements required in the First Phase Playa Vista mitigation measures is the consistency of the proposed development (in this case, the road) with the Coastal Act.

C. SUBSTANTIAL ISSUE ANALYSIS

1. BIOLOGICAL PRODUCTIVITY/WATER QUALTIY

Section 30231 requires that development protect the productivity of coastal waters, streams, wetland, estuaries and lakes:

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of

human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

- Appellants the Executive Director and John Davis raised issues about the adequacy of the analysis and the conditions addressing water quality protection in the City's action. They claim that the local approval is not based on an analysis of the relationship of the proposed new street intersection to all of the alternative wetland restoration alternatives or an analysis of the influence of the road on the hydrology of the wetland, presently and in each of the proposed restoration configurations.

Analysis. The City report did not analyze whether either during or after construction the proposed project would result in increased discharge of either pollutants or silt into the wetlands, which the City and the applicant acknowledged to be immediately contiguous to the site. Instead, the City's report addressed the level of compaction of the land within the footprint of the new pavement, noting that the new pavement would not increase the impervious area of the watershed. The city did not spell out the link between the reduced impervious surfaces and its conclusion that the project would not add to polluted run off. In addition, the City's analysis limited itself to direct displacement of (Corps) wetlands and did not address indirect effects of the construction or of the completed project on nearby wetlands. The wetland findings limited themselves to the determination that the physical development was not placed on land that is currently a wetland, and did not consider or enlarge on indirect effects -- whether or not, construction near a wetland would or would not have an adverse effect. The City did not analyze the hydrology of the development or the influence that the configuration might have on the hydrology of future configurations.

The City imposed no special conditions relating that the protection of the water quality of the wetlands during or after construction. The City did not analyze impact of development adjacent to or near wetlands on the health of the wetlands or attempt to address potential impacts through conditions. Therefore the Commission finds that there is a substantial issue with respect to the conformity of the City's action with respect to Section 30231 of the Coastal Act.

2. DIKING DREDGING OR FILLING WETLANDS SECTION 30233

Section 30233 limits wetland fill to limited circumstances and purposes. Recent court decisions have required that the Commission or the agency issuing a coastal development permit allow fill only for these purposes.

Section 30233

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

In its initial approval of CDP-00- 008, the City of Los Angeles Board of Public Works concluded that the development was consistent with wetland protection policies, citing the staff report, which stated:

"(Sections 30230-30236) : The proposed project will not impact the maintenance, enhancement or restoration of areas designated as marine resources. The improvements and the surrounding areas have been surveyed and environmentally sensitive habitat areas covered under §30411(b) have been identified. The dedication and intersections are not within any identified sensitive habitat areas. Though wetland areas were identified north south and east of the project site, the project will not involve or impact the biological productivity or water quality of coastal waters, streams wetlands, estuaries and lakes appropriate to maintain optimum populations of marine organisms as discussed in §30231. Construction of the improvements will not involve the transport of any hazardous substances as prohibited by §30232. This project will not involve the diking filling or dredging of open coastal water (30233), commercial fishing and recreational boating facilities (30234), revetments, breakwaters of other construction altering the natural shoreline (30235). The project does not constitute an alteration of rivers or streams and therefore does not affect water supply and flood control (30236)." City staff report, board of public works,

- With respect to wetlands, the Executive Director's appeal stated: The local action does not include and is not based on a recent wetland delineation in the immediate area of the project using the Cowardin method of wetland delineation.

ANALYSIS. The City found that the roadwork was located 200 feet away from the wetlands. This finding was not consistent with the information in the City file. The map in the City file shows that the south side of Jefferson is adjacent to a wetland and the roadwork and stockpiling is 55 feet from the ACOE delineated wetland. The road is not 200 feet wide. The local government may have incorrectly interpreted the available maps. (Exhibit)

The local government's record relied on a 1989 wetland delineation carried out by the United States Army Corps of Engineers (ACOE) to ascertain whether or not the project would have impacts on wetlands. The Corps of Engineers requires the presence of three wetland indicators, inundation, hydric soils and a predominance of vegetation that is adapted to saturated soil conditions.

The Department of Fish and Game requires only one of these indicators to be present to determine that an area is a wetland. The indicators are:

(1) The land is periodically inundated or saturated, or
(2) The soils are hydric (soils that are periodically anaerobic due to saturation), or
(3) The predominant vegetation is adapted to life in saturated soil conditions.

The method of delineation employed by the ACOE and relied on by the local government might not detect wetlands that would be considered wetlands under the criteria used by the State of California. The State criteria will typically result in a greater area of land delineated wetland, and is especially sensitive to seasonal wetlands or wetlands found in arid climates. Under the Cowardin method of wetland delineation, a method used by the Department of Fish and Game in California, a site is a wetland if any one of the above criteria applies (Exhibit):

In its regulations, the Commission defines wetlands

> 13577(b) Wetland …Wetlands shall be defined as land where the water table is at, near or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, waterflow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface wet or saturated substrate at some time during each year and their location within or adjacent to vegetated wetlands or deepwater habitats. For purposes of this Section, the upland limit of a wetland shall be defined as:
>
> (A) The boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;
>
> (B) The boundary between soil that is predominantly hydric and soil that is predominantly non-hydric; or
>
> (C) In the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation and land that is not.

The presence of either water on or near the soil surface, predominantly wetland vegetation, or predominantly hydric soils defines wetlands. The presence of only one indicator is enough--if the plants are there; the soils do not have to be hydric for an area to be defined as a wetland.

In 1984, the Department of Fish and Game delineated wetlands at Playa Vista (exhibits.) These maps did not include any area under cultivation as wetlands. Based on those maps, wetlands are immediately adjacent to the south side of Jefferson Boulevard, and west of the intersection, to the south side of Culver Boulevard. No wetlands are shown north of Culver Boulevard, in the immediate area of the intersection. The nearest wetlands are shown well west of this intersection. Based on the 1984 delineation, the work would be located a few hundred feet from wetlands.

However, in 1991, some years after agriculture ceased, the Department of Fish and Game adopted the Corps delineation of wetlands in Area B, resulting in an increase in the area that the Department identified as wetlands in Area B Playa Vista from 112 acres to 170.56 acres. The reason that the area determined to be wetland by the Corp in 1989 exceeded the area determined to be wetland by fish and game in 1984 reflects the department of fish and games then policy on agricultural use. Fish and Game noted in 1982 and 1984 that certain agricultural lands were not flooded, and did dry out, but it was possible that if they were not plowed every year, as they were in 1982, the would "revert" to wetland. Fish and game identified those areas as (AG) on their maps (Exhibit 16 page 6). (Letter, Bontadelli to Jim Burns, December 20 1991, exhibit 16) When the Corps resurveyed, agriculture had ceased and wetland vegetation had grown back Fish and game field checked and concurred with the Corps. However, the Department did not assert that the remaining (AG) areas located above 4.65 MLLW, which was the Corps line the corps chose to demarcate inundation, were wetlands. Base on the Corps map (enlarged by the applicant as the "Fish and Game" map in the City file) there is a wetland channel about 70 feet north of Culver Boulevard and about 55 feet from the 15 foot wide staging area. However, it is clear that this work is close to a wetland area and the exact location of the wetland, under state standards needs to be verified, and the impacts of the project on the wetland must be evaluated.

At the City level, the applicant did not provide an up-to-date delineation of this area using the Cowardin method to determine whether or not a wetland exists. Without a careful identification of the areas that might be wetland or a current delineation based on state standards, it is not possible to determine whether or not the development will be consistent with Section 30233. Without a discussion about the impacts of construction near a wetland, as noted below, it is impossible to determine whether of or not the action is the least environmentally damaging alternative. Therefore the Commission finds that there is a substantial issue with respect to the conformity of the City's action with respect to Section 30233 of the Coastal Act.

3. ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Section 30231 of the Coastal Act is discussed above. Section 30240 of the Coastal Act requires:

> (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
>
> (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

In the Executive Director's appeal, it states: The local approval cites the Phase I EIR that does not purport to analyze impacts of development at the location of this road improvement.

Appellant John Davis contends that the project is inconsistent with Chapter 3 of the Coastal Act. However, at a local hearing, Mr. Davis contended that the area of the intersection was in a Significant Ecological Area.

Analysis. Area B Playa Vista contains 170 acres of wetland and at one time contained more. In the Playa Vista Draft Master Plan EIR and in numerous other surveys, several endangered or sensitive species were observed nesting or feeding in the area. These include the Belding's Savannah sparrow and other bird and insect species. Much of the Playa Vista area, including areas adjacent to this intersection, was also identified by the Los Angeles County Museum of Natural History in 1976, as one of the 62 sites in the county that are Significant Ecological Areas (SEA). However, the intersection itself was not designated as an SEA (Exhibit 13)

In analyzing the impacts of this development, the City staff confined itself to the immediate footprint of the roadway, but did not analyze how the work could impact areas around it and how or whether any wetland habitat would function differently as a result of the project. In response to a contention that this area is a Significant Ecological Area—the City responded that it had reviewed a biological survey. The biological survey limited itself to the immediate area around the work. The survey did not mention the Belding's Savannah sparrow; a state listed bird that nests in the wetland to the north of Culver Boulevard, and some distance south of the proposed project. There was no analysis concerning what kind of indirect impacts could be felt outside the footprint of the construction and of measures to mitigate such impacts. Since the City findings did not analyze the issues of interaction of the project with nearby sensitive areas, it is not possible to determine whether the conclusion that there would be no impacts to habitat was correct.

The City imposed two special conditions to protect of the wetlands and other nearby sensitive habitat areas during or after construction: (1) protection of nesting birds found in the immediate area of fencing and 2) place temporary fencing around the job site and staging area to confine the trucks to that area. The nesting birds in question were mourning doves, which occasionally nest in the grassland in the immediate area of the road. The City's analysis was a very narrow analysis of immediate impacts within the footprint of the development, so it is impossible to determine whether or not these measures are sufficient to protect environmentally sensitive habitat in Area B. Therefore, the Commission finds that there is a substantial issue with respect to the conformity of the City's action with Sections 30231 and 30240 of the Coastal Act.

4. PREJUDICE TO THE DEVELOPMENT OF A LOCAL COASTAL PROGRAM THAT IS CONSISTENT WITH THE COASTAL ACT

Section 30604 (a) of the Coastal Act states:

> Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

In the Commission appeal, the Executive Director stated that:

There is a certified LUP for this area, which will be required to be amended when the final plans for Playa Vista are submitted.[5] City has not drafted the revised LUP, which would incorporate such a restoration plan. Therefore, it is impossible to determine the consistency of the present project with the preferred alternative for wetland restoration with the local coastal program. The City has not drafted the revised LUP, which would incorporate such a restoration plan. Therefore, it is impossible to determine the consistency of the present project with the preferred alternative for wetland restoration) with the local coastal program. Approval of the project at this time may prejudice the ability of local government, the City of Los Angeles to adopt an LCP that is consistent with the Coastal Act and which will be most protective of resources.

- Executive Director's appeal further stated: "The major issue is whether building this road now will limit the choices of wetland restoration plans. Improving the road is premature given that the final wetland restoration plan has not been chosen. The road may have different impacts on the hydrology of the wetland under different restoration configurations."

- Realignment of this intersection is a requirement of the Playa Vista First Phase EIR. The locally issued permit does not explain the reasons the City has required this intersection improvement or why this improvement could not be delayed until Phase Two development decisions are made.

[5] As noted elsewhere, in the settlement of the "Friends of Ballona" lawsuit (see substantive file documents), Playa Capital's' predecessor, Maguire Thomas Partners-Playa Vista agreed to commit additional area to wetlands and pay an agreed on sum, about $1,000,000 for restoration. This would require an amendment to the LUP. Maguire Thomas Partners -Playa Vista also indicated that the revision that incorporated the additional wetlands would include changes in the mix and location of uses outside of the restored wetlands. The various restoration alternatives would be considered in an EIR and in the LUP amendment.

Analysis.

The certified Land use plan is not the standard of review, which is chapter 3 of the Coastal Act. There are difficult issues having to do with how to combine restoration with future development, which the City, the Public, the Commission and the developer will need to address.

The City 's approval of a new road without considering these issues does not raise a Substantial Issue. Section 30604 is not a Chapter 3 policy. Section 30625(b)(1) mentions only consistency with Chapter 3 policies. However, the Commission will consider prejudice of the LCP if it finds substantial issue, since Section 30604 is part of the standard of review of the application on appeal.

5. CEQA

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City found that the project conformed to CEQA because it was a mitigation measure required in a certified EIR. In analyzing this contention locally the Board of Public Works found:

"The proposed project is a City Council adopted mitigation measure for potential traffic impacts describe in the Playa Vista Phase I EIR. It is described as DOT Mitigation Measure F14 in EIR No. 90-0200-SUB(C)(CUZ)(CUB) which was certified by the City Council on September 1, 1993, when the City approved VTTM No. 49104 which was certified by the City council on September 21, 1993, when the City [Council approved] TTM no. 49104 (Playa Vista Phase I). In December of 1995 the City Council again reviewed and considered the EIR along with a combined Addendum Mitigated Negative Declaration, prepared in connection with its approval of a modification to VTTM No. 49104 and its approval of VTM No. 52092, and again adopted findings. "

As noted above, the standard of review for substantial issue on appeal is whether the local government's approval raises a substantial issue of conformity with the policies of Chapter 3 of the Coastal Act. Section 13096 is not a Chapter 3 policy. However, the Commission will consider conformity with CEQA if it finds substantial issue, since the requirements of Section 13096 are part of the standard of review of the application on appeal

6. NATIONAL ENVIRONMENTAL POLICY ACT VIOLATIONS

Appellant John Davis objects that the project is not consistent with NEPA. The Commission does not have the authority to enforce NEPA. This contention does not address standards of the Coastal Act. Therefore, the appellant's contention does not raise a valid ground for appeal pursuant to Coastal Act Section 30602. The area that contains this intersection is within the study area of the Playa Vista Phase II EIS/EIR, which is nearing completion. However, whether improving this intersection, which will not fill Corps jurisdictional wetlands, needs to wait until that EIS is complete is a question that is in the jurisdiction of the Corps and not of the Commission.

V. DE NOVO ACTION, APPROVAL WITH CONDITONS

Staff is recommending approval of the permit de novo with conditions to limit construction and staging to areas that are outside the wetlands, to control siltation and to employ best management practices to minimize inflow of polluted street runoff after construction. The staff also recommends that disturbed areas be revegetated and that, in view of indirect impacts on wetlands and wetlands habitat, that the applicant identify an area at least equal in size to the area disturbed by the project and remove invasive plants from that area. Finally, consistent with city approval, the applicant shall assure that a qualified biological monitor be on site at all times, that an archaeological monitor be present during initial grading and that construction shall not impact rare plants and nesting birds. Finally, staff recommends that the applicant seek Corps authorization in advance of construction and obtain all necessary permits from state agencies, most specifically, the Regional Water Quality Control Board.

Staff recommends that the Commission approve the permit for the development with conditions by adopting the following motions.

FIRST MOTION

MOTION: ***I move that the Commission approve Coastal Development Permit No. A-5-PLV-01-281 pursuant to the staff recommendation.***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves Coastal Development Permit No. **A-5-PLV-01-281** for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

SECOND MOTION

MOTION: ***I move that the Commission approve Coastal Development Permit No. 5-01-223 pursuant to the staff recommendation.***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves Coastal Development Permit No 5-01-223 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

VI STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

VII SPECIAL CONDITIONS.

1. STAGING AREAS FOR CONSTRUCTION

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit a plan for the review and written approval of the Executive Director consistent with Exhibit 2 and with the Revised Staging Areas shown on Exhibit 4 (Applicant's Exhibit B, revised 10/25/01.) The plan will indicate that zones of construction disturbance, including, but not limited to, the construction staging area(s) and construction corridor(s) and temporary detours. Such areas will not encroach onto wetlands identified by staff (noted as "Alkali Depression in Exhibit 2, provided by the applicant) or identified in the US Army Corps of Engineer Wetlands Map of 1989 (Corps Wetlands, Exhibit 10). Zones of construction disturbance will be set back no less than 50 feet from all Corps wetlands. Such zones of construction disturbance will also be set back no less than 12 feet from wetlands identified by staff, more specifically the wetland area shown as an "Alkali Depression" on Exhibit 2.

1. The plan shall demonstrate that:

   (a) Construction equipment or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition;

   (b) The applicant shall place visible hazard fencing (no less than four feet tall, at least one foot outside the Corps Wetlands shown in Exhibits 5 and 10 and of the "Alkali Depression" noted in Exhibits 2, and 6. The fencing shall be placed to the

satisfaction of the Executive Director. The applicant shall place sandbags and/or plastic on the upland sides of each fence to avoid siltation into these protected areas.

2. The plan shall include, at a minimum, the following components:

(a) A site plan that depicts:

(1) Limits of the staging area(s);
(2) Construction corridor(s);
(3) Construction site;
(4) Location of construction fencing and temporary job trailers;
(5) Location of stockpile areas;
(6) Detours,; and
(7) A temporary runoff control plan that directs runoff from the site through any necessary and appropriate Best Management Practices prior to discharge into Ballona wetland.

B. The permittee shall place the fences and sandbags noted in Section 1.A.2. (a), to the satisfaction of the Executive Director before beginning construction. The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans or location of fences or sandbags shall be reported to the Executive Director, in advance of the relocation. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. LANDSCAPE PLAN.

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant will submit, for the review and written approval of the Executive Director, a plan for landscaping all areas disturbed by construction and not to be paved that is compatible with habitat restoration in the Ballona Wetlands. A qualified restoration specialist who is a biologist or licensed landscape architect shall prepare the plan.

The plan shall be consistent with the following requirements:

1. All vegetation planted on the site will consist of native, drought-tolerant plants typically found in the Ballona wetlands and associated dune and bluff faces. The seeds and cuttings employed shall be from sources in and adjacent to the Ballona wetlands and the Airport Dunes.
2. No non-native or invasive species will be employed or allowed to naturalize or persist on the site. Invasive plants are those identified in the California Native plant society, Los Angeles -- Santa Monica Mountains Chapter handbook entitled *Recommended List of Native Plants for Landscaping in the Santa Monica Mountains,* January 20,

1992 and those otherwise identified by the Department of Fish and Game or the United States Fish and Wildlife Service.
3. Planting will maintain views of the wetlands and bluffs.
4. Initial installation of all planting will be completed within 60 days after completion of construction.
5. The applicant will actively monitor the site for three years after permit issuance, remove non-natives and reinstall plants that have failed. The applicant will monitor and inspect the site no less than every 30 days during the first rainy season (November-March the first year after the newly constructed road is open to vehicles, and no less than every 60 days during the first year. Thereafter, the applicant will monitor the site every three months or on the Department of Transportation's regular landscape maintenance schedule, whichever is more frequent.
6. All required plantings will be maintained in good growing conditions throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.

B. The plan shall include, at a minimum, the following components:

1. A map showing the types, size, and locations of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features;
2. A schedule for installation of plants;
3. An identification of seed sources and plant communities of the plants planned to be employed;
4. A manual for maintenance methods and a plan for training maintenance employees in the cultivation requirements of the plants on the plant palette and on the identification of invasive plants;
5. A list of chemicals proposed to be employed and methods for their application. Said chemicals shall not be toxic to fish or wildlife or persistent in the environment. Herbicides shall be applied by hand application or by other methods that will prevent leakage, percolation or aerial drift into adjacent restoration areas. Pursuant to this:

    a) An Integrated Pest Management Program shall be designed and implemented for all of the proposed landscaping/planting on the project site. Because of the project is located within the immediate watershed of Ballona wetland, where feasible and appropriate, alternatives to pesticides including, but not limited to, the following shall be employed:

        (1) Introduction of natural predators such as ladybugs, lacewings, garter snakes and toads. Also, some bacteria, viruses and insect parasites may be preferable to pesticides.
        (2) Weeding, hoeing and trapping manually.
        (3) Use of non-toxic, biodegradable, alternative pest control products.

b) Where pesticides and/or herbicides are deemed necessary in conjunction with the IPM program, the following shall apply:

(1) All state and local pesticide handling, storage, and application guidelines, such as those regarding timing, amounts, method of application, storage and proper disposal, shall be strictly adhered to.
(2) Pesticides containing one or more of the constituents listed as parameters causing impairment of the receiving waters for the proposed development; (Which are the Ballona Wetlands, Ballona Creek and Ballona Creek Estuary.) on the California State Water Resources Control Board 1998 Clean Water Act Section 303 (d) list, or any such list subsequently adopted by the Board shall **not** be employed. Products that shall also not be employed are those containing the following constituents:

(3) Chem A. (group of pesticides) – aldrin, dieldrin, chlordane, endrin, heptachlor, heptachlor epoxide, hexachlorocyclohexane (including lindane), endosulfan, and toxaphene, DDT., or any

B. The permittee shall undertake development in accordance with the approved final plan and schedule and other requirements. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. EROSION AND SEDIMENT CONTROL PLAN.

A. **PRIOR TO ISSUANCE OF THE PERMIT**, the applicant shall submit for the review and written approval of the Executive Director an Erosion and Sediment Control Plan outlining appropriate Best Management Practices to limit, erosion and sedimentation during construction, such that no sediment escapes into the wetlands identified in Condition 1. Due to the sensitive location of the project, the plan must meet the following criteria:

1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas, and stockpile areas, which will be delineated consistent with Condition 1 above as shown on Exhibit 2. All areas outside the zones of construction disturbance as described in condition and all wetlands and the alkali depression on-site (undisturbed areas) shall be clearly delineated on the project site with visible hazard fencing. Project working drawings shall indicate that no activity including

equipment staging or grading shall occur in any “undisturbed area" or in any "wetlands”.

2) To the maximum extent practicable, construction shall occur in stages that limit the length of time that the soils are uncovered at any one time. Pursuant to this condition, the applicant shall provide a staging plan as part of its Erosion and Sediment Control Plan.
3) The plan shall specify that no grading shall take place during the rainy season (October 15 through April 1).
4) No Construction shall occur at night, and the construction are shall not be illuminated with work lights.
5) Applicant shall use, install or construct temporary drains and swales, gravel or sand bag barriers, fiber rolls, and silt fencing as appropriate. Applicant must also stabilize any stockpiled fill or cut or fill slopes with geotextiles or mats and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to and concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction.
6) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days. Temporary measures shall include, but are not limited to, stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag and gravel bag barriers, silt fencing; temporary drains and swales and sediment basins. Given the sensitivity of adjacent habitat, sediment basins are not sufficient to capture sediment. They must be accompanied by more stringent means of controlling sediment in close proximity to marshes and wetlands as identified directly south of Jefferson Boulevard and as mapped as the “Alkali Flat“ in Exhibit 6).
7) No sediment shall be discharged into Ballona Creek or Ballona Wetlands, or the “Alkali Flat”.
8) Trucks and equipment shall not be allowed to track mud or other materials onto roads per methods outlined in Caltrans BMP CD29A (2), Caltrans Storm Water Quality Handbook, or an equivalent measure required by Los Angeles City Department of Public Works.
9) The applicant shall test soils for toxicity during excavation according to DTSC rules and RWQCB rules.
10) If toxic deposits are identified, other than non-water soluble aerially deposited lead, the toxic material shall be removed and transported to an appropriate disposal site approved for contaminants that may be discovered in the material. The site shall be an approved disposal site located outside the coastal zone.
11) No toxic material excavated shall be stockpiled on site for more than 24 hours.
12) Aerially deposited lead discovered during the excavation of the site shall be handled according to DTSC rules. If the lead is water-soluble, it shall be hauled offsite as indicated in Subsection A10 above. If it is

not soluble, it may be properly capped and used under the improved roadway, if consistent with DTSC approvals.

13) The applicant or its contractors shall not use lead-contaminated materials from off-site as road fill.

14) Airborne particulates shall be controlled consistent with the rules of the Air Quality Management District.

C. The permittee shall undertake development in accordance with the approved final plans and with this condition. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. <u>CONSTRUCTION AND POST-CONSTRUCTION WATER QUALITY MANAGEMENT PLAN</u>.

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT** the applicant shall provide for the review and written approval of the Executive Director a Water Quality Management Plan. This plan shall include a list of best management practices to reduce and control the amount of polluted runoff that is discharged into the Ballona Wetland, or any other waterway. Pursuant to this requirement, the plan shall include:

1. Construction BMPs
   (a) All trash and debris shall be disposed in the proper recycling or trash receptacles at the end of each day.
   (b) All stock piles and construction material shall be covered and enclosed on all sides, shall be located as specified in condition 1 above, but in addition, as far away as possible from the identified wetlands, drain inlets, or any other waterway, and shall not be stored in contact with the soil.
   (c) Vehicles shall be refueled offsite.
   (d) Asphalt demolished from the site shall be removed within 48 hours. Asphalt shall not be stockpiled.
   (e) Contaminated sediments discovered during construction shall be permanently removed from the site and transported to an appropriate offsite disposal facility.
   (f) Staging areas shall include impermeable berms to catch fuel spills.
   (g) Spills of all solid and liquid materials shall be immediately cleaned up. Contaminated soils and clean-up materials shall be disposed of according to the requirements of this permit and the RWQCB. Dry spills should be swept, not washed or hosed. Wet spills on impermeable surfaces shall be absorbed, and absorbent materials properly disposed. Wet spills on soil shall be dug up and all exposed soils properly disposed.

(h) Apply concrete, asphalt, and seal coat during dry weather to prevent contaminants from coming into contact with stormwater runoff.
(i) Cover storm drain inlets and manholes when paving or applying seal coat, tack sea, slurry seal, fog seal, or similar materials.
(j) Always park paving machines over drip pans or absorbent materials, since they tend to drip continuously.

2. Post Construction BMPs
(a) Maintain post-development peak runoff rate and average volume at levels that are no grater than pre-development levels; AND
(b) Reduce post-development loadings of Total Suspended Solids (TSS) so that the average annual TSS loadings are no greater than pre-development loadings; OR
(c) If subsection 2b is not feasible, after construction has been completed and the site is permanently stabilized, reduce the average annual TSS loadings by 80% (for the purposes of this measure, an 80% TSS reduction is to be determined on an average basis and should not result in TSS lower than the pre-development level).
(d) Install an appropriate suite of source control and structural treatment BMPs to achieve the above-stated goals. Structural treatment BMPs shall be designed to treat, infiltrate, or filter the amount of stormwater runoff generated by any storm event up to, and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor, for flow-based BMPs.
(e) BMPs must include intermediary catch basins, hydrocarbon filtration devices, and trash filters sized according to the above specifications.
(f) Install energy dissipaters at the outlets of all discharge points.
(g) Monitor and maintain all structural and non-structural BMPs, including, but not limited to, hydrocarbon filters, energy dissipaters, trash racks, and catch basins according to manufacturers' specifications and according to the regional climate. Such procedures shall occur at a frequency as specified by the manufacturer, where appropriate, and no less than a 30-day interval during the rainy season (October 1 – April 1).
(h) Regularly patrol the area for discarded containers, trash and other materials likely to blow into or otherwise impact the marsh.
(i) Otherwise comply with the orders of the RWQCB for large paved areas.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans

shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. ARCHAEOLOGICAL MONITOR

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide evidence for the review and written approval of the Executive Director that the archaeological exploration permitted under CDP 5-98-164 has been undertaken, and that the reviewing agencies (The United States Army Corps of Engineers and the State Historic Preservation Officer) have determined that no further investigation of the sites in the vicinity of the approved road widening project is required. Pursuant to that agreement an archeological monitor shall be present dung initial grading.

(1) If cultural deposits or grave goods are unexpectedly uncovered during construction, work must stop until the archaeological monitor and the Native American monitor can evaluate the site and, if necessary, develop a treatment plan that is consistent with the programmatic agreement and with permit 5-98-164.

(2) If human remains are found, the Commission requires that the applicant carry out recovery or reburial consistent with the research design approved in the programmatic agreement and CDP 5-98-164.

B. The permittee shall undertake development in accordance with the approved final plan and schedule and other requirements. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. PROJECT LIGHTING.

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT** the applicant shall provide lighting plans for the review and written approval of the Executive Director. The plans shall provide :

1. During and after construction, Illumination shall be at the lowest levels allowed in federal and state standards on a secondary highway or streets.
2. All lights shall be directed downward so that spillover outside the right of way shall not exceed ten feet.
3. No night construction activities shall take place.

B. The permittee shall undertake development in accordance with the approved final plan and schedule and other requirements. Any proposed changes to

the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

7. BIOLOGICAL MONITOR/OFFSITE IMPACTS

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT** and again before any vegetation is disturbed; a qualified biologist shall survey the site and prepare a report concerning the presence of (1) any rare plants listed on either the state or federal endangered or threatened species list or by the California Native Plant Society as species of concern (rare or listed plants), AND (2) nesting birds. If a nesting bird is found within or immediately adjacent to the footprints of the paving, detour or of the staging areas (area of disturbance noted in Special Condition 1), the work shall not proceed until the qualified biologist certifies that the chicks have fledged and that the work will not disturb the birds. If any rare or listed plant is found within the footprints of all areas of disturbance, the work shall not proceed. All reports shall be submitted, reviewed and accepted in writing by the Executive Director, and shall be filed in the Commission office prior to issuance of the permit and again prior to the start of work. The applicant shall place visible 48-inch high hazard fences around the area in which any rare plant has been found and prevent excavation, stockpiling, and the entry of vehicles or storage of equipment in this area. A biological monitor shall remain on site through out the roadwork.

B. The permittee shall undertake development in accordance with this condition. Any proposed changes to the approved biological monitoring procedures shall be reported to the Executive Director. No changes to the approved biological monitoring procedures shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

8 REMOVAL OF INVASIVE SPECIES.

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT** the applicant shall identify an area on its property no smaller than the total area of the zones of construction disturbance identified in Special Condition 1. The applicant shall submit a plan for the review and written approval of the Executive Director identifying this area and including methods for removal of invasive plants within this area. No dead plants shall be left on site and no persistent chemicals shall be employed. Herbicides may be employed if applied with small cans or paintbrushes to the stems of cut plants. Invasive plant are defined as including pampas grass, ice plant and/or castor beans or any other plant noted on the CNPS invasive plant list above. Unless authorized by an amendment to this permit, the invasive plant removal area shall not include any area identified as wetland in the Corps 1989 Wetland

Delineation or as Wetland or Wetland (AG) in the 1984 Fish and Game wetland delineation, Exhibits 10 and 11. The plan shall include the details of techniques, timing and methods of documentation of such removal. The applicant shall not undertake such work when there are nesting birds present in or near the invasive plants. Pursuant to this requirement, a qualified biological monitor shall survey the areas before the removal program begins.

B. The removal shall be completed within one year of the issuance of this permit.

C. The permittee shall undertake development in accordance with the approved final pan and with this condition. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

9. <u>DISPOSAL OF HAZARDOUS MATERIAL DISCOVERED DURING CONSTRUCTION</u>.

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT** the applicant shall provide for the review and written approval of the Executive Director a contingency plan that has been reviewed by the RWQCB for testing of excavated materials for contamination.

(1) The plan shall include a contingency plan for excavation, and disposal of any contaminated hazardous materials that may be discovered during construction. If over-excavation is required, the applicant shall inform the Executive Director who shall determine whether an amendment to this permit is required.

(2) If the grading quantities exceed those estimated in the application an amendment is required. The plan shall identify testing protocols, and supervision and shall identify sites approved for disposal that are outside the coastal zone.

(3) All stockpiles shall be located within the zone of construction disturbance identified according to condition 1.

(4) Material shall not be stockpiled on site more than 24 hours.

B. The permittee shall undertake development in accordance with the approved final pan and with this condition. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

10. <u>CORPS APPROVAL</u>

Prior to commencement of construction, the applicant shall provide written evidence that United States Army Corps of Engineers has determined that no approval from the Corps

is required for this development to go forward prior to the Corps' approval of the pending Playa Vista Phase II EIS/EIS.

11. NO WORK DURING THE RAINY SEASON

The applicant shall not undertake any grading paving Dan land disturbance approved in this permit during the rainy season, October 15-march 30. The applicant may install lighting and landscaping during the rainy season.

VIII FINDINGS AND DECLARATIONS/ DE NOVO ACTION AND THE DUAL PERMIT.

The Commission adopts the following findings.

A. PROJECT DESCRIPTION

The applicant proposes to realign the intersection of Culver Boulevard and Jefferson Boulevard in Area B Playa Vista. As descried in more detail in Section IV.A above, the project would demolish the existing "Y"-shaped intersection at Culver Boulevard and Jefferson Boulevard and construct a "T"-shaped, right-angled intersection. The applicant also asserts that all detours, and staging and equipment storage will be set back from delineated wetlands and will reduce the amount of impervious area from 15,644 square feet, its present size, to 9,661 square feet, a net reduction of 5,983 square feet. (Exhibits)

Changes to the intersection that the applicant proposes include:

(1) Dedication of property (approximately 12,000 square feet) along the northeast corner of the intersection;
(2) Realignment of the westbound roadway of Jefferson Boulevard approximately 150 feet northeasterly;
(3) Relocation and modification of the existing traffic signal equipment;
(4) Widening the northwest side of Culver Boulevard up to 5 feet and
(5) Widening the southeast side of Culver Boulevard up to 11 feet from Jefferson Boulevard to a point approximately 780 feet northerly of the existing Jefferson Boulevard centerline to provide up to a 45-foot roadway within the existing 65-foot right-of-way. (Exhibits 2-4)

The centerline of the new connector will be located about 250 feet east of the present intersection. The project will remove some of the present "V" shaped intersection asphalt in a triangle between this new road way and the roadway that will remain, resulting in a net reduction in impervious paved area. The area between the rights -of-way has not been identified by any agency as a wetland, although historically it was wetland. The 1989 United States Army Corps of Engineers[6] wetland delineation both

[6] In 1991 the Department of Fish and Game agreed that the Corps delineation of wetlands in area B, 170 acres, was more accurate that the Department's former 112 acre delineation for Area B.

show that actual wetlands are located almost immediately adjacent to the south side of Jefferson Boulevard. The delineated Corps wetlands north of Culver Boulevard are about 70 feet from the proposed road work but almost adjacent to the south side of the current intersection. An enlarged map shows that these wetlands extend slightly into the southerly boundary of the Jefferson Boulevard right-of-way. An isolated patch of wetlands north of Culver Boulevard are located about 55 feet north of the staging area, and about 70 feet away from the proposed new road way. This wetland channel is separated from the road work by a railway berm (Exhibits 3, 4, 5, and 10.)

The applicant provided a vegetation map. The vegetation map shows a depression area of about 1,000 square feet north of the intersection. The Commission determines that additional area, mapped by the applicant as an Alkali Depression should be considered a possible wetland and should be subject to the provisions of Section 30233 of the Coastal Act until a new delineation occurs.

B WETLAND FILL, CONSISTENCY WITH SECTION 30233

As noted above, the project is a road way about seventy feet from two wetlands, a road-width away from one wetland and 70 feet away from another. On October 24, Senior Staff Biologist Dr. John Dixon visited the site. He observed an additional area just east of the present intersection that supports hydrophytic plants. Although staff does not do wetland delineations, it was his opinion that this area needed further investigation and that this area might be considered wetland if it had been delineated using the Cowardin method (see above).:

> **"Culver & Jefferson Intersection**
>
> East of the intersection there is a roughly triangular area of compacted bare dirt. To the east of that there is a depressional area with a preponderance of wetland plants, principally alkali weed (*Cressa truxillensis*; FACW) and alkali mallow (*Malvella leprosa*; FAC) and patches of rabbits foot grass (*Polypogon monspeliensis*; FACW+) along the eastern edge. The higher area north and east of this depression along the edge of Culver is dominated by perennial ryegrass (*Lolium perenne*; FAC) and bristly ox-tongue (*Picris echiodes*; FAC). Across the street along the north side of Culver, there is a flat area adjacent to the road which in places is dominated by bermuda grass (*Cynodon dactylon*; FAC) and saltgrass (Distichlis spicata; FACW). The ground then rises 20 – 30 cm and forms a berm which supports a patchwork of upland and facultative wetland ruderal species such as *Chrysanthemum* sp. (NI), wild radish (*Raphanus sativa*; NI), foxtail chess (*Bromus madritensis*; NI), perennial ryegrass, bristly ox-tongue, alkali mallow, and English plantain (*Plantago lanceolata*; FAC-). There were no indicators of wetland hydrology or hydric soils in any of these areas. The area to be paved and the area proposed for staging activities (principally along the north and south edges of Culver) were marked with flagging. The [Winfield, the applicant's consultant's] wetland delineation report concluded that "...coastal wetlands are not present at the project impact area." I concur with this assessment. However, the depression containing alkali weed, alkali mallow, and

> rabbits foot grass might delineate [as a wetland]. The originally proposed staging area was immediately adjacent to that area. In the field, we asked that the edge of the staging area be moved to the north to completely avoid the depression. This was done and I have received a new map showing the new alignment upon which we agreed. With that change, no potential wetland areas will be directly affected by construction activities" (Dixon, Memo, 10/25/01, Exhibit 8.)

This area is shown on the applicant's vegetation maps as dominated by *Cressa turxillensis*, (alkali weed,) a "facultative wetland plant "which means it can tolerate saturated soil but may also appear in other disturbed areas. The applicant has agreed to move the staging area back roughly 5 feet, from where it was originally approved by the City. As revised by the applicant the staging area would be set back about 12 feet from the depression (Exhibit 4.) Dr. Dixon observed that an old railroad embankment separates the mapped wetland north of Culver Boulevard from the intersection and the staging area. The mapped wetland will not be filled or impacted directly by this action. He also concurred that the area within the footprint of the new roadway was not a wetland.

Sections 30233, quoted above, requires that wetlands fill may occur for limited purposes. The Commission has determined that this project will not fill any wetland or area that might be considered wetland. However, it is so close to wetlands that fill could occur inadvertently during construction. In order to prevent that outcome, the Commission is requiring fencing of the work area, that all staging be set back 12 feet from the depression that might be considered wetland, and that other impact areas be set back 50 feet from wetlands. The Commission also requires conditions preventing discharges of silt or liquids into the wetland areas be implemented.

However indirect impacts could result from the construction. The most important mitigation measure the City imposed was a construction fence around the work areas and the wetlands to prevent entry by construction vehicles or storage of equipment. However, additional impacts from noise, as noted by the City, disruption of nesting birds and runoff could occur. Moreover, impacts such as noise could potentially reduce the range or feeding areas of other birds. The applicant's biological consultant (exhibits) believes that such impacts would not occur. The Commission finds that heavy equipment and machinery operating on a slightly raised road that is laid out in a wetland could cause impacts which have not been anticipated or studied. Moreover all indirect impacts are not mitigated by these actions. The noise and dust arising from the work will have some impacts.

The Commission concurs that this development reduces the area of pavement. However, for this to be an advantage to the habitat of the area, contaminated soils must be removed from the area, and the areas adjacent to the road and within the road be planted with plants that support wetlands species. After grading and disturbance, certain species of plants introduced plants that have succeeded in disturbed areas and farmlands because they are hardy and reproduce successfully, displace slower growing native plants and move into natural areas. These invasive plants shade out native species and make difficult for native species of insects that depend on the naturally occurring plants to survive. The biomass increases, but the diversity of the area, and

the productive of the natal habitat decreases. Such invasive plants, for example, ice plant, castor bean and pampas grass, already common in the areas, form and supplement a seed bank that can rapid overwhelm nearby restoration areas, causing permanent damage and reducing the productivity of the native species of the area. Therefore the Commission requires the applicant to increase the productivity of the native plants of the area and to enhance nearby areas by removing invasive plants that shade out native species and "take over" after grading.

As conditioned, to construct the intersection in the locations and by the methods proposed, which will not fill wetlands, to avoid siltation or removal of wetland vegetation by not allowing vehicles into the wetlands, to control siltation and to remove invasive plants in the wetland where the work is located, this project is consistent with Sections 30230 30231 and 30233.

C. IMPACTS ON WETLANDS AND OTHER SENSITIVE HABITATS CONSISTENCY WITH SECTIONS 30230, 30231 AND 30240

Sections 30230 and 30231 require in part (see above for full citation)

> Section 30230. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.
>
> Section 30231. …The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, … maintaining natural vegetation buffer areas that protect riparian habitats…
>
> Section 30240
>
> (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
> (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas

This road is located on a prism of fill within a wetland. The area should be treated as wetlands buffer. The drainage from the road enters an unlined ditch adjacent to the road. Any water from this area enters the wetlands, and any silt or chemicals discharged during construction will enter the wetlands. The only reason to consider approving this project from a wetland impact point of view is that area covered by asphalt or other impervious surfaces is being reduced by this the project and it Is possible to improve the quality of the water discharged from the road. However,

removing old road material is not without risks. Roads and the area under roadways may be polluted with lead and other material that cannot remain in the area.

Nevertheless, as noted above even with careful setback and avoidance of direct disruption some indirect impacts will occur, at least temporarily. Therefore the Commission requires, in condition number s 1, 2, 3, 4 and 11

1) Fencing installed and inspected delineating staging as shown on Exhibit 2 and 4 prior to construction.
2) Sandbags at edge of the fences.
3) Avoidance of herbicides.
4) No night work or night lights.
5) Replanting road side and road median area with low plants that support wetlands animals.
6) Biological monitor.
7) Cessation of work if nesting birds are observed in the work area.
8) Water quality and runoff conditions as indicated below.
9) Testing all soils excavated.
10) Removal of asphalt and contaminated soils.
11) Setback of construction areas from wetlands.
12) Post construction water quality plan.
13) Removal of invasive species.
14) No work in the rainy season
15) Disposal of any hazardous material properly.
16) Control of lighting during and after construction

Only as conditioned can the commission find that the development is consistent with Sections 30230, 30231 and 30240 with respect to development adjacent to environmentally sensitive habitat areas.

D. WATER QUALITY AND THE MARINE ENVIRONMENT CONSISTENCY WITH SECTIONS 30230 AND 30231

Section 30230 requires the protection of marine resources. Roads are major sources of pollutants that flow into water bodies. The project is directly adjacent to a wetland area. Both short term run off during construction and long term impacts after construction can affect Ballona wetland. Secondly the road now acts as a dam within a wetland system. Water flows under the road in tow location s where there are culverts. The applicant asserts that this project will not change the present hydrology of the wetland. Representatives of the City Department of Public Works agree, noting that any change in the road elevation or configuration that may occur as part of restoration, would require relocation of a great deal more roadway. They note that and that this intersection is only a minor Section of a road that extends approximately 7,500 feet from Lincoln Boulevard to Vista del Mar in Playa del Rey. Representatives of the City of Los Angeles Department of Public Works assert that the project will not change the present hydrology or commit the City to any particular future configuration. Other considerations, such as the location of existing utility distribution lines, would be, in their

estimation a much greater limitation on moving this road than this changed intersection configuration.

The applicable Coastal Act sections, 30230, and 30231 30233, are quoted above.

In considering the consistency of projects with the Coastal Act, the Commission has consistently required that the design and devices proposed be sized for a two year 24 hour storm event, and that the treatment could occur in 85% of the storms. Because this project is located in a low lying area, the Commission requires that the applicant provide detailed hydrological calculations, outlining how the roadway, and the water flowing off the roadway and the gravel filed "pervious area" will interact. The applicant has provided an opinion from a hydrological consultant. The consultant indicates that all water from this road flows into a roadside ditch, which on the south side of the road is contiguous to the salt marsh. The applicant notes that the increase in impervious area will not make the quality of the water flowing off the road and into the marsh worse. The applicant's consultant further asserts that, in his view, the runoff flowing into the ditches and percolating into the ground will result in fewer impacts to the marsh than "concentrating the run off with curbs and gutters." (See Exhibits 14,15.)

Even though the applicant has not proposed to use fossil filters, the Commission finds that due to the sensitivity of the area, low flow filters are appropriate and has required in conditions 4 and 5 that they be employed. The most immediate water quality impact of constructing a road adjacent to a wetland is siltation and damage from vehicles and their fuels. The Commission requires numerous conditions to avoid siltation as a result of construction and to confine dirt, vehicles, stockpiles and fuel and to prevent their escape into adjacent marsh. The applicant proposes to use standard sand bagging and other siltation control methods such as covering stockpiles and to use watering to reduce fugitive dust.

Another concern is the handling of older, contaminated sediments during construction. The applicant has not provided a system of testing the earth removed and has explained where and how it intends to dispose of excess asphalt and contaminated excavated earth. Area B is an old oil field. During the excavation of the Freshwater Marsh, which was also located in Area B, some contaminated sediment was discovered. The coastal development permit did not anticipate or address this problem. Instead it established standards for the elevations of the final grading and the marsh's functioning after construction and revegetation. However, the Regional Water Quality Control Board required Playa Capital to truck the sediments to various landfills outside the coastal zone. While there was some controversy with the DTSC, that had earlier delegated its oversight role to the Board, the material (drilling mud) was removed. The Commission in this case requires testing of sediments, and imposes certain standards for the removal of any toxic material found on the site. However, the determination of how toxic any substances are and which dump should appropriately receive excavated material remains in the jurisdiction of the RWQCB and the DTSC.

Again, with conditions to address construction methods, handling of contaminated sediments and the provision of detailed erosion and siltation control plans, this project

would conform to Sections 30230 and 30231 in terms of its potential impacts on water quality.

E. PUBLIC ACCESS AND RECREATION

These streets are major access routes to Dockweiler State Beach in Playa del Rey. Improving safety and access through this intersection will improve public access to the beach. This road is heavily traveled during weekdays, accommodating as much as 2,000 cars per hour on a two-lane segment between Jefferson Boulevard and the Marina freeway. On weekends, Jefferson Boulevard is a main beach access route from central Los Angeles. Adult bicycle teams use Jefferson Boulevard as a route from Los Angeles to the beach bike path. By making this corner safer, this project will improve public access to the beach. The project as proposed is consistent with the public access and recreation policies of the Coastal Act.

F. VISUAL IMPACTS

This project will not change the visual environment of the area or result in noticeable widening of the road. It will not change the scale of the road and will result in any greater asphalt area. The new pervious area will be filled with gravel, which will be visible, although the applicant intends to use “earth tone rock.” The applicant’s representatives state that it will be filled with gravel rather than being vegetated because, the City Department of Transportation was concerned about possible traffic hazards and maintenance costs of landscapng, and would not permit the pervious area to be landscaped..

G. PREJUDICE TO THE DEVELOPMENT OF THE LOCAL COASTAL PROGRAM

Coastal Act Section 30600 states in part

> (a) Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

In 1984, the Commission certified a Land use Plan for this area that have been submitted by Los Angeles County, the Marina del Rey Ballona Land Use Plan. The Friends of Ballona Wetlands immediately sued the Commission and the County (Friends of Ballona Wetlands, et al. v. the California Coastal Commission, et al. Case No. C525-826.) When the City of Los Angeles annexed the area, the City submitted an almost identical plan as it pertained to areas within its jurisdiction. On November 26, 1986, the Commission certified, with suggested modifications, the Land Use Plan portion of the City of Los Angeles, Playa Vista segment, Local Coastal Program. The Friends of Ballona Wetlands added the City to their lawsuit.

The certified LUP contains policies to guide the types, locations and intensity of future development in the Playa Vista area. The LUP designated most of Playa Vista for intense urban development, reserving 163 acres as wetland and additional area for other habitat purposes. The Land Use Plan portion includes all roads proposed in this project although the proposed roads do not include all of the widening envisioned in the LUP, but only widening appropriate to the first stage of development. When the Commission certified the LUP for this area in 1986, this road was included as a six-lane road.

In 1990-91 the new owner and the opponents settled the suit. The owner agreed to restore the wetlands and to save a larger area of wetlands than it had proposed to save in the past. The opponents agreed to a different configuration of the development and agreed not to oppose the development except as it impacted wetlands. The applicant, in settling the lawsuit, agreed to request an amendment to the certified LUP. The amended LUP would include a much larger restored saltmarsh area than the presently certified LUP. The Commission, the City and the County agreed to process the revised Land Use Plans expeditiously, but did not commit to approving any changes, having not evaluated the content of the changes according to the process required by the law..

As a first step, the applicant's predecessor submitted a Master Plan for Playa Vista to both the City and the County. In 1992, the City circulated both a Draft Master Plan EIR and a detailed Draft Phase I Playa Vista EIR, the latter of which the City certified in 1993. In Area B, the proposed Playa Vista Master Plan project would carry out the restoration program agreed to in the settlement. The Master Plan Project proposes restoration of over 198 acres of "estuarine"[7] habitat, the creation of a 26.1-acre freshwater marsh facility, the restoration of about 12 acres of dunes and construction of 1800 dwelling units and 20,000 sq. ft. of retail uses. The Master Plan did not include a final design for a restored wetland, but deferred the design until alternative wetland restoration plans could be analyzed in a Phase II EIS/EIR and in the amendment to the Land Use Plan.

All public and agency testimony on future and interim restoration plans, such as the Corps 1135 project, and the Notices of Preparation for the Master Plan EIR discuss ways to allow more water into the wetlands. One major problem in restoring the area is how to get water under or around the existing roads, roads that are now constructed on prisms of fill over culverts. Possible restoration plans include plans that would restore the marsh at different levels of inundation. Resource agencies have commented, saying that higher levels of inundation might be more productive to fish but would impact species dependent on the Salicornia marsh, such as the Belding's Savannah sparrow. Flood control agencies have expressed concern that raising water levels could flood existing homes and businesses that are located on the north side of Culver Boulevard as it approaches Playa del Rey

The City and County of Los Angeles and the United States Army Corps of Engineers are currently preparing a draft EIS/EIR for the second phase of the Playa Vista

[7]"Estuarine" includes saltmarsh, mudflat, tidal channels and saltflats

development. Several alternatives for wetland mitigation and restoration are under consideration. From letters, testimony and communications from the public, from professional biologists and others, it is evident that there is a wide range of opinions concerning the goals of wetland restoration and the measures of success. Neither the draft EIS/EIR, nor the alternative plans are yet available for public review. The City has not drafted the revised LUP, which would incorporate such a restoration plan.

The Commission must consider whether approving the project at this time may prejudice the ability of local government, the City of Los Angeles to adopt an LCP that is consistent with the Coastal Act and which will be most protective of resources. James Doty, of the City of Los Angeles Department of Public Works, indicates that Public Works was not concerned about this issue in processing the present permit because it would be very expensive to raise or re-route this road. He believes that it is more probable that a restoration plan would add culverts and not re-route roads. He further indicated that the expense of changing this intersection would be quite a minor part of elevating or re-routing the road, and would not, in his opinion, determine the City's decision on alternatives. He added his opinion that any other public agency funding a restoration would consider expense in choosing alternatives. He argues that this improvement is so minor that it cannot be considered a permanent improvement and that it will not commit the City to approving any particular configuration in the LCP (James Doty, personal communication, October 2001). The biologist preparing the restoration section of the EIR, Eric Sakowtiz, wrote to say that, in his opinion, this minor improvement would not be inconsistent with any of the likely alternatives (Exhibit 26.)

However, it is clear that the configuration of the restored wetland is not yet known. The Ballona Wetland is a dry upper marsh, dominated by salicornia and saltgrass and in some areas, suffering from invasive plants, such as ice plant and pampas grass that tolerate wet soils. Most alternatives increase the amount of water entering the marsh. All face constraints because the Ballona Wetlands are adjacent to commercial and residential structures that were constructed after the Corps constructed the food control channel at Ballona Creek. The channelization was perceived to be necessary to relieve the property along Culver Boulevard from periodic flooding.
.
The Commission notes that this project will add some asphalt to a 15,644 square foot intersection, and remove additional asphalt, resulting in a net reduction of 5,983 square feet of asphalt road surface. It is a minor and, as public works projects go, relatively inexpensive improvement. The Commission concurs that reconfiguring one intersection will not drive the City decision on patterns of restoration, and if the California Department of Parks and Recreation or a private agency acquires the area, one intersection will not limit its alternatives. The expense of relocating this intersection is minor, compared with the expense of any alternative that would reconfigure the roads though this wetland.

The proposed development is consistent with the policies of the certified LUP. As proposed, the project will not adversely impact coastal resources or access. The Commission, therefore, finds that the proposed project will be consistent with the Chapter 3 policies of the Coastal Act and will not prejudice the ability of the City to prepare a Local Coastal Program implementation program.

H. CEQA

Section 13096 of the Commission's administrative regulations requires Commission approval of any coastal development permit application to be supported by a finding that the application, as conditioned by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects that the project may have on the environment.

In the case, the project originally proposed could have had significant adverse impacts, but the applicant has avoided those impacts by changing its project, relocating the staging area away from the alkali depression that staff identified as a potential srate wetland, and mitigating the remaining impacts through the implementation of the conditions proposed. There are no additional feasible alternatives or mitigation measures available that could substantially lessen any remaining significant adverse impact the activity may have on the environment. Therefore, the proposed project is consistent with CEQA and the policies of the Coastal Act.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

1. City of LA CDP No. 95-03 (August 1995), extended (October 1997), currently expired;
2. State CDP No. 5-95-148 (January 1996), extended (October 1997), currently expired:
3. City of LA CDP No. 00-3B (subject appeal)
4. Easement Agreement By and Between U.S. Trust Company of California, N.A. and Maguire Thomas Partners—Playa Vista, a California Limited Partnership, August 1990.
5. Security agreement regarding Area C between Kenneth Cory, State Controller and Summa Corporation, 1984, with first through fourth amendments.
6. Chief Deputy Controller to US Trust Company of California, October 30, 1998 correspondence and attached irrevocable offer to dedicate.
7. California Department of Transportation (CALTRANS), Encroachment Permit 798-6MC-0618; Encroachment Permit Rider 700-6RW-2956, November 8, 2000
8. First Phase Project for Playa Vista, Final EIR SCH # 90010510) –EIR No 90200-Sub (c)(CUZ)(CUB)
9. Mitigated Negative Declaration--Playa Vista Plant Site (MND# 950240 (SUB) & Addendum to the EIR for the first Phase Project for Playa Vista --August 1995
10. Los Angeles County Marina La Ballona certified LUP, October 1984.
11. City of Los Angeles Local Coastal Program, Certified Land Use Plan for Playa Vista 1987 (Section C4);
12. Jerry B. Baxter, District Director, Caltrans District 7, letter to Con Howe, Director of Planning, City of Los Angeles, re Playa Vista Traffic Mitigation Measures, September 10,1993.
13. Robert Goodell, Chief, Advance Planning Branch, Caltrans District 7; Memorandum to Tom Loftus, State Clearinghouse, re DEIR Playa Vista Phase I 90-0200 SUB (C) (CUZ) (CUB), March 22, 1993
14. Coastal Development Permits and Appeals: A-5-VEN-98-222(EMC Snyder); A-5-90-653 (Channel Gateway); 5-91-463 (Maguire Thomas); 5-91-463A2, 5-91-463R; 5-91-463R2: 5-00-139W; extended (October 1997), currently expired; 5-91-463, 5-91-463A2, 5-91-463R, 5-95-148, permit waiver 5-00-139, 5-91-463, 5-98-164, A-5-PDR 99-130/5-99-151; 6-97-161,
15. City of Los Angeles Bureau of Engineering Staff Report, No. 95-03 –August 2, 1995
16. LADOT Inter-departmental correspondence --Amendment of Initial Traffic Assessment and Mitigation Letter dated September 16, 1992 --Revised May 24, 1993.
17. City of Los Angeles City Engineer, Memorandum Public Works review of ETI report titled “Subsurface Geo-chemical Assessment of Methane Gas Occurrences” for the Playa Vista project; file 1996-092; May 10, 2000
18. Victor T. Jones, Rufus J. LeBlanc, Jr., and Patrick N. Agostino, Exploration Technologies, Inc, Subsurface Geotechnical Assessment of Methane Gas Occurrences. Playa Vista First Phase Project. April 17, 2000. [Also referred to as the Jones Report or “the ETI report.”]

19. Camp Dresser and McKee 2000, “Soil gas sampling and analysis for portions of Playa Vista Areas A and C near Culver Boulevard Widening Project” 4 page geologic letter report to Maria P Hoye dated 27 November, 2000 and signed by A. J. Skidmore and M. Zych (RG).
20. Mark Johnsson, Senior Geologist, California Coastal Commission, Memorandum: “Culver Boulevard Widening Project and Potential Soil Methane Hazards”
21. City of Los Angeles Department of Building and Safety, Memorandum of General distribution, #92, Methane Potential Hazard Zones, March 19, 1991.
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34. First Amendment to Agreement Among U.S. Trust Company of California N. A, Maguire Thomas Partners – Playa Vista Area C a California limited partnership, and Maguire Thomas Partners--Playa Vista, a California limited partnership, effective May 15, 1994.
35. Second Amendment to Agreement among U.S. Trust Company of California N. A, Maguire Thomas Partners – Playa Vista Area C a California limited partnership, and Maguire Thomas Partners-Playa Vista, a California limited partnership, entered into December 29, 1994.